

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

RENEE GALLOWAY, DIANNE TURNER,  
DOMINIQUE DE LA BAY, ANDREA  
SCARBOROUGH, EARL BROWNE, ROSE  
MARIE BUCHERT, REGINA NOLTE,  
KEVIN MINOR, TERESA TITUS, BURRY  
POUGH, LISA MARTINEZ, SONJI  
GRANDY, ANASTASIA SHERMAN,  
JERRY AVENT, LUCINDA GRAY,  
ANTHONY GREEN, and LINDA MADISON  
as individuals and as representatives of the  
classes,

Plaintiffs,

v.

BIG PICTURE LOANS, LLC; MATT  
MARTORELLO; and ASCENSION  
TECHNOLOGIES, INC.,

Defendants.

Case No. 3:18-cv-00406-REP

**JURY TRIAL DEMANDED**

**REPLY IN SUPPORT OF PLAINTIFFS' RESPONSE TO MARCH 29, 2019  
ORDER REGARDING STAY OF PROCEEDINGS (ECF NO. 203)**

Plaintiffs respectfully request that certain limited discovery proceed in this matter while the case is stayed. Specifically, Plaintiffs request that the Court enter an Order:

- Requiring TranDotCom and DataX to sequester and preserve information responsive to Plaintiffs' subpoenas, for production after the stay is lifted;
- Requiring Troutman Sanders to produce documents responsive to Plaintiffs' subpoena by April 30, 2019; and

- Permitting Plaintiffs to update the Court on the status of discovery, including whether additional depositions of Messrs. Liang and McFadden are needed, after the Court decides Plaintiffs' Motion for Leave to File an Amended Complaint or, in the Alternative, to Amend the Stipulated Protective Order (Dkt. 185).

Dkt. 211 at 3.

The Corporate Defendants object to producing or making available to Plaintiffs any of this discovery until after a class has been certified. Dkt. 211 at 4. This objection should be overruled. The discovery that Plaintiffs request is highly relevant to class certification issues such as class-wide damages. Unlike *Williams*, there is no pending class certification motion here, class certification discovery is still open, and Plaintiffs are still developing evidence to support class certification and to handle any difficulties managing the class action. Because the requested discovery is decidedly relevant to class certification, no reason exists to wait until after a class certification decision to produce it.

#### **A. TranDotCom and DataX Subpoenas**

The Corporate Defendants do not object to requiring TranDotCom and DataX to preserve data responsive to Plaintiffs' subpoena. *See* Dkt. 211 at 3. They only object to the information being produced before a ruling on class certification. *Id.* But the loan-level data that Plaintiffs seek from TranDotCom and DataX is relevant both to the merits of Plaintiffs' claims — i.e. it likely will show that Plaintiffs and class members paid more for their loans than state usury laws allow — and to class certification. For example, the requested data will confirm that the class is ascertainable and that damages can be proven in a straightforward manageable manner.

Plaintiffs do not object to receiving the TranDotCom and DataX after the stay is lifted so long as TranDotCom and DataX confirm that each has sequestered and preserved all information responsive to Plaintiffs' subpoena.

**B. Troutman Sanders Subpoena**

Troutman Sanders previously agreed to respond to Plaintiffs' subpoena and produce documents by April 30, 2019. In their response, the Corporate Defendants agree that, at the time of the stay, Troutman "was reviewing documents to determine whether any responsive documents exist" and represent that Troutman "has no objection to continuing that process while the Proposed Second Amended Complaint is pending." Dkt. 211 at 3. But it is unclear from this response whether Troutman is agreeing to produce responsive documents or just search for them. No reason exists to delay the production.

*First*, the Troutman subpoena seeks non-privileged information regarding Defendants' unlawful lending scheme that will be relevant to class certification issues. Dkt. 205-3 at 5 (showing Plaintiffs seek from Troutman all communications regarding Bellicose that pre-date its representation of Matt Martorello (or any defendant)). Unlike *Williams*, there is no pending class certification motion in this case. Because the information requested in the subpoena will be relevant to Plaintiffs' future class certification motion, production should not be delayed. Such an outcome is wholly consistent with this Court's ruling in *Williams* where it made sense to defer further discovery until after a class certification decision because, in that case, class certification discovery is closed.

*Second*, Troutman does not object that producing responsive documents would be burdensome. Nor does it identify any other reason for withholding the information. Accordingly,

Plaintiffs request that the Court require Troutman Sanders to honor its previous agreement and produce documents by April 30, 2019.

**C. Liang and McFadden Subpoenas**

Plaintiffs have requested that they be permitted to use any deposition testimony from Mr. Liang and McFadden that was taken in *Williams* during the stay. Defendants again object and request that the Court issue an order preventing Plaintiffs from using the depositions until after class certification. Plaintiffs are willing to wait to use any depositions taken in *Williams*. But it is unreasonable to require them to wait until after class certification, especially considering that their motion for leave to file an amended complaint (Dkt. 185) remains pending. Plaintiffs respectfully request that they be permitted to update the Court on the status of discovery, including whether additional testimony from Mr. Liang and Mr. McFadden is needed, after the Court decides Plaintiffs' motion for leave to amend.

For the above-stated reasons, Plaintiffs respectfully request that the Court enter an Order (1) requiring TranDotCom and DataX to sequester and preserve information responsive to Plaintiffs' subpoena and file declarations within 30 days of the Order's entry confirming that they have done so; (2) requiring Troutman Sanders to produce documents responsive to Plaintiffs' subpoena by April 30, 2019; and (3) permitting Plaintiffs to update the Court on the status of discovery, including whether additional depositions of Messrs. Liang and McFadden are needed, after the Court decides Plaintiffs' Motion for Leave to File an Amended Complaint or, in the Alternative, to Amend the Stipulated Protective Order (Dkt. 185).

RESPECTFULLY SUBMITTED AND DATED this 22nd day of April, 2019.

CONSUMER LITIGATION ASSOCIATES, P.C.

By: /s/ Leonard A. Bennett, VSB #37523

Leonard A. Bennett, VSB #37523  
Email: [lenbennett@clalegal.com](mailto:lenbennett@clalegal.com)  
Elizabeth W. Hanes, VSB #75574  
Email: [elizabeth@clalegal.com](mailto:elizabeth@clalegal.com)  
Craig C. Marchiando, VSB #89736  
Email: [craig@clalegal.com](mailto:craig@clalegal.com)  
763 J. Clyde Morris Boulevard, Suite 1-A  
Newport News, Virginia 23601  
Telephone: (757) 930-3660  
Facsimile: (757) 930-3662

Kristi C. Kelly, VSB #72791  
Email: [kkelly@kellyandcrandall.com](mailto:kkelly@kellyandcrandall.com)  
Andrew J. Guzzo, VSB #82170  
Email: [aguzzo@kellyandcrandall.com](mailto:aguzzo@kellyandcrandall.com)  
Casey S. Nash, VSB #84261  
Email: [casey@kellyandcrandall.com](mailto:casey@kellyandcrandall.com)  
KELLY & CRANDALL, PLC  
3925 Chain Bridge Road, Suite 202  
Fairfax, Virginia 22030  
Telephone: (703) 424-7572  
Facsimile: (703) 591-0167

E. Michelle Drake, *Admitted Pro Hac Vice*  
Email: [emdrake@bm.net](mailto:emdrake@bm.net)  
John G. Albanese, *Admitted Pro Hac Vice*  
Email: [jalbanese@bm.net](mailto:jalbanese@bm.net)  
BERGER & MONTAGUE, P.C.  
43 SE Main Street, Suite 505  
Minneapolis, Minnesota 55414  
Telephone: (612) 594-5999  
Facsimile: (612) 584-4470

Beth E. Terrell, *Admitted Pro Hac Vice*  
Email: [bterrell@terrellmarshall.com](mailto:bterrell@terrellmarshall.com)  
Jennifer Rust Murray, *Admitted Pro Hac Vice*  
Email: [jmurray@terrellmarshall.com](mailto:jmurray@terrellmarshall.com)  
Elizabeth A. Adams, *Admitted Pro Hac Vice*  
Email: [eadams@terrellmarshall.com](mailto:eadams@terrellmarshall.com)  
TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450

Matthew Wessler, *Admitted Pro Hac Vice*  
Email: [matt@guptawessler.com](mailto:matt@guptawessler.com)

GUPTA WESSLER PLLC  
1735 20th Street, NW  
Washington, DC 20009  
Telephone: (202) 888-1741  
Facsimile: (202) 888-7792

*Attorneys for Plaintiffs and Proposed Classes*

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

David N. Anthony, Virginia State Bar #31696  
Timothy J. St. George, Virginia State Bar #77349  
TROUTMAN SANDERS LLP  
1001 Haxall Point  
Richmond, Virginia 23219  
Email: [david.anthony@troutmansanders.com](mailto:david.anthony@troutmansanders.com)  
Email: [tim.stgeorge@troutmansanders.com](mailto:tim.stgeorge@troutmansanders.com)

*Attorneys for Defendants*

Hugh M. Fain, III, VSB #26494  
M. F. Connell Mullins, Jr., VSB #47213  
John M. Erbach, VSB #76695  
SPOTTS FAIN PC  
411 East Franklin Street, Suite 600  
Richmond, Virginia 23219  
Email: [hfain@spottsfain.com](mailto:hfain@spottsfain.com)  
Email: [cmullins@spottsfain.com](mailto:cmullins@spottsfain.com)  
Email: [jerbach@spottsfain.com](mailto:jerbach@spottsfain.com)

Richard L. Scheff, *Admitted Pro Hac Vice*  
Jonathan P. Boughrum, *Admitted Pro Hac Vice*  
Michael Christopher Witsch, *Admitted Pro Hac Vice*  
ARMSTRONG TEASDALE  
One Commerce Square  
2005 Market Street, 29th Floor  
Philadelphia, Pennsylvania 19102  
Email: [rscheff@armstrongteasdale.com](mailto:rscheff@armstrongteasdale.com)  
Email: [jboughrum@armstrongteasdale.com](mailto:jboughrum@armstrongteasdale.com)  
Email: [mwitsch@armstrongteasdale.com](mailto:mwitsch@armstrongteasdale.com)

Tod Daniel Stephens, *Admitted Pro Hac Vice*  
Paul Louis Brusati, *Admitted Pro Hac Vice*  
ARMSTRONG TEASDALE  
7700 Forsyth Blvd., Suite 1800  
St. Louis, Missouri 63105  
Email: [tstephens@armstrongteasdale.com](mailto:tstephens@armstrongteasdale.com)  
Email: [pbrusati@armstrongteasdale.com](mailto:pbrusati@armstrongteasdale.com)

Michelle Lynn Alamo, *Admitted Pro Hac Vice*  
Alec Paul Harris, *Admitted Pro Hac Vice*  
ARMSTRONG TEASDALE  
4643 South Ulster Street, Suite 800  
Denver, Colorado 80237  
Email: [malamo@armstrongteasdale.com](mailto:malamo@armstrongteasdale.com)  
Email: [aharris@armstrongteasdale.com](mailto:aharris@armstrongteasdale.com)

*Attorneys for Defendant Matt Martorello*

Craig T. Merritt, VSB #20281  
James E. Moore, VSB # 4526  
Shannan M. Fitzgerald, VSB #90712  
CHRISTIAN & BARTON, LLP  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219  
Email: [cmerritt@cblaw.com](mailto:cmerritt@cblaw.com)  
Email: [jmoore@cblaw.com](mailto:jmoore@cblaw.com)  
Email: [sfitzgerald@cblaw.com](mailto:sfitzgerald@cblaw.com)  
Email: [kmueller@cblaw.com](mailto:kmueller@cblaw.com)

Justin Alexander Gray, *Admitted Pro Hac Vice*  
Anna Marek Bruty, *Admitted Pro Hac Vice*  
ROSETTE, LLP  
44 Grandville Avenue SW, Suite 300  
Grand Rapids, Michigan 49503  
Email: [jgray@rosettelaw.com](mailto:jgray@rosettelaw.com)  
Email: [abruty@rosettelaw.com](mailto:abruty@rosettelaw.com)

*Attorneys for Defendants Big Picture Loans, LLC and Ascension Technologies, LLC*

DATED this 22nd day of April, 2019.

CONSUMER LITIGATION ASSOCIATES, P.C.

By: /s/ Leonard A. Bennett, VSB #37523

Leonard A. Bennett, VSB #37523

Email: lenbennett@clalegal.com

763 J. Clyde Morris Boulevard, Suite 1-A

Newport News, Virginia 23601

Telephone: (757) 930-3660

Facsimile: (757) 930-3662

*Attorneys for Plaintiffs and Proposed Classes*